Yeap Joo Kim v Ong Choo Ean

HIGH COURT (PULAU PINANG) — ORIGINATING MOTION NO 25-75 OF 1998
ABDUL HAMID MOHAMAD J
14 DECEMBER 1999

Land Law *— Restraint of dealings — Caveat — Application for removal of caveat — Whether beneficiary of deceased's estate has locus standi to make application — Whether 'aggrieved person' — National Land Code 1965 s 327*

Land Law *— Restraint of dealings — Caveat — Interest in part of land — Whether caveat can be entered over whole land — Particulars to be provided when entering caveat — Whether caveat was defective — Effect of National Land Code 1965 s 323(1)(b), Form 19B*

Land Law *— Restraint of dealings — Caveat — Oral declaration of beneficiary to wife to hold land as trustee — Whether caveator had caveatable interest by virtue of oral declaration of trust — Question of balance of convenience to be considered*

The plaintiff made an application to remove the caveat entered by the defendant on the land which formed part of the Estate of Khoo Sian Ewe (deceased). The plaintiff was one of the beneficiaries of the land and the defendant (caveator) was the wife of another beneficiary, Yeap Tuan Aun who claimed that her husband had made an oral declaration to her that he would hold the land as trustee for her. The question to be considered was whether the plaintiff, as a beneficiary, had locus standi to make this application which depended on whether she was an 'aggrieved person' within s 327 of the National Land Code 1965 ('the NLC'). Further, learned counsel for the plaintiff argued that Form 19B used by the defendant was defective and no grounds for the defendant's claim was given.

Held, allowing the application with costs:

(1) The plaintiff, as a beneficiary, has instructed the solicitors of the trustees of the estate to transfer the lands to her and the other beneficiaries. However, because of the existence of the caveat, the transfer could not be made. The caveat had to be removed first. The court was of the view that the plaintiff was an 'aggrieved person' (see p 589H–I). The plaintiff was not a beneficiary who was only entitled to a share of the general residue. If he was entitled to enter a caveat, he should also by analogy be entitled to apply to remove a caveat, as an 'aggrieved person' (see p 590B–C); *Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37 followed.

(2) In accordance with s 323(2) and (3) of the NLC, when applying for entry of a caveat, one should state one's interest in para 1 of Form 19B and, in para 2 give the grounds of the claim. The defendant — who claimed to have obtained her interest in the estate from her husband and, if at all, may only have an interest in

part of the estate — should clearly state so in the Form 19B. Failure to do so would render the entry of the caveat void and should, on that ground alone, be removed (see p 590E, G–H); *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 followed. Further, the court was of the view that the grounds should properly be stated in para 2 itself, even if briefly (see p 591A).

(3) All that the defendant said about her ground for wanting to lodge a caveat was that there was an oral declaration of trust on behalf of her husband to hold the land in trust for her. No particulars were given. Assuming that there was a serious issue to be tried, the question of balance of convenience was still to be considered (see p 591C–D, H).

[Bahasa Malaysia summary

Plaintif telah membuat satu permohonan untuk mengalihkan kaveat yang dimasuki oleh defendan ke atas tanah yang membentuk sebahagian daripada Harta Pusaka Khoo Sian Ewe (si mati). Plaintif merupakan seorang daripada benefisiari tanah tersebut dan defendan (kaveator) merupakan isteri kepada seorang benefisiari yang lain, Yeap Tuan Aun yang menuntut bahawa suami beliau telah membuat satu deklarasi secara lisan kepada beliau bahawa suaminya akan memegang tanah tersebut sebagai pemegang amanah beliau. Persoalan yang perlu dipertimbangkan adalah sama ada plaintif, sebagai seorang benefisiari, mempunyai locus standi untuk membuat permohonan ini yang bergantung kepada sama ada beliau adalah 'seorang yang terkilan' di dalam maksud s 327 Kanun Tanah Negara 1965 ('KTN'). Tambahan pula, peguam arif bagi pihak plaintif telah menghujahkan bahawa Borang 19B yang digunakan oleh defendan adalah defektif dan tiada alasan untuk tuntutan defendan telah diberikan.

Diputuskan, membenarkan permohonan tersebut dengan kos:

(1) Plaintif, sebagai seorang benefisiari, telah mengarahkan peguam kepada pemegang amanah harta pusaka tersebut memindah-milikkan tanah tersebut kepada beliau dan benefisiari-benefisiari lain. Walau bagaimanapun, oleh kerana kewujudan kaveat tersebut, pindahmilik tersebut tidak dapat dilakukan. Kaveat tersebut perlu dialihkan terlebih dahulu. Mahkamah berpendapat bahawa plaintif merupakan 'seorang yang terkilan' (lihat ms 589H–I). Plaintif bukan merupakan seorang benefisiari yang hanya berhak kepada sebahagian daripada baki umumnya. Sekiranya beliau berhak untuk memasuki kaveat, beliau hendaklah juga secara analogi berhak untuk memohon untuk mengalihkan kaveat, sebagai 'seorang yang terkilan' (lihat ms 590B–C); *Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37 diikut.

(2) Bersesuaian dengan s 323(2) dan (3) KTN, apabila membuat permohonan untuk memasuki kaveat, seseorang itu hendaklah menyatakan kepentingannya di dalam perenggan 1 kepada Borang 19B dan, di dalam perenggan 2, memberikan alasan-alasan terhadap tuntutan. Defendan — yang menuntut untuk memperoleh kepentingan beliau di dalam harta pusaka daripada suami beliau dan, jika sekalipun, mungkin hanya mempunyai kepentingan di dalam sebahagian daripada harta pusaka tersebut — hendaklah dengan jelas menyatakan sedemikian di dalam Borang 19B. Kegagalan untuk berbuat demikian akan menyebabkan kemasukan kaveat tersebut terbatal dan hendaklah, atas alasan itu sendiri, dialihkan (lihat ms 590E, G–H); *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 diikut. Tambahan pula, mahkamah berpandangan bahawa alasan-alasan tersebut hendaklah dinyatakan dengan betul di dalam perenggan 2 sendiri, walaupun secara ringkas (lihat ms 591A).

(3) Apa yang defendan katakan mengenai alasan beliau hendak memasukkan kaveat adalah bahawa terdapat deklarasi secara lisan bagi pihak suami beliau untuk memegang tanah tersebut di dalam amanah untuk beliau. Tiada butir-butir telah diberikan (lihat ms ****). Dengan andaian bahawa wujud isu yang serius yang perlu didengari, persoalan mengenai imbangan kemudahan masih lagi perlu dipertimbangkan (lihat ms 591C–D, H).]

Notes

For cases on application for removal of caveat, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2581–2668.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345 (folld)
Khoo Teng Seong v Khoo Teng Peng [1990] 3 MLJ 37 (folld)
Malayan Banking Bhd v Chuah Chok Kiang [1997] 5 MLJ 778 (refd)
Tan Heng Poh v Tan Boon Thong [1992] 2 MLJ 1 (refd)
Wu Shu Chen (Sole executrix of the estate of Goh Kang How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussain [1997] 2 MLJ 487 (refd)

Legislation referred to

National Land Code 1965 ss 323(1)(b), (2), (3), 327, Forms 19A, 19B

Ramsun Ho Chii Huey (*See, Ramsun & Tan*) for the applicant.
Teja Singh Penesar (*Teja Singh Penesar & Co*) for the respondent.

Abdul Hamid Mohamad J: This is an application by the plaintiff to remove the caveat entered by the defendant on the land known as Lot 2576 and 2579, Section 1, North East District, Penang on 9 September 1995.

A The plaintiff is one of the beneficiaries of the said land, which forms part of the Estate of Khoo Sian Ewe (deceased). The defendant (caveator) is the wife of another beneficiary, Yeap Tuan Aun. There are four beneficiaries altogether. She entered the caveat because she claimed that her husband had made an oral declaration to her that he would hold the said land as trustee for her and that she had came to know that New Bob Realty B Sdn Bhd had claimed to have bought the said land.

The first question to be considered is whether the plaintiff has the locus standi to make this application. The plaintiff is one of the beneficiaries of the Estate, just as the husband of the defendant. It appears that the dispute is between the beneficiaries and the wife of one of the beneficiaries, so the C trustees decide to stand by and wait for the results.

The question whether the plaintiff, as a beneficiary, has locus standi to make this application depends on whether she is an 'aggrieved person' or not — s 327 NLC.

In *Wu Shu Chen (Sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487, Mokhtar D Sidin JCA said at p 499: that an aggrieved person is a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. 'The category of aggrieved person is never closed.' It should be noted that the applicant in that case was a bona fide purchaser for valuable consideration. It was held that he was entitled to make the E application.

In *Malayan Banking Bhd v Chuah Chok Kiang* [1997] 5 MLJ 778, the plaintiff who was an assignee was held to be an 'aggrieved person'. Low Hop Bing J, in his judgment said at p 783:

> A 'person aggrieved' under s 327(1) has been decided by our courts as F someone who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something or that in law something wrongful has been done to him that affects his title to the property: see *Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors* [1994] 1 MLJ 136, or any person whose legitimate rights or G interests in the caveated land would be affected or who would suffer loss if the caveat in question is not removed: see *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248. More recently, Mokhtar Sidin JCA, in *Wu Shu Chen & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487 at para 499 said that: 'an aggrieved person is ... a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed'.

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In that case, so long as the caveat was not removed, the plaintiff would remain as an 'unregistered chargee'. It was therefore held to be an 'aggrieved body'.

In the present case, the plaintiff, as a beneficiary, has instructed the I solicitors of the trustees of the Estate to transfer the said lands to her and the other beneficiaries. However, because of the existence of the caveat the transfer could not be made. The caveat has to be removed first. I am of the view that the plaintiff is an 'aggrieved person'.

In *Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37, Lim Beng Choon J held that a trustee of property held in trust as well as a beneficiary of any trust property is entitled to enter a caveat pursuant to para (b) of s 323(1) of the NLC 1965. But a beneficiary, who is only entitled to a share of the general residue of an estate, has no right to enter a caveat against the property of the estate when no part of the property of the estate has been expressly or impliedly devised and bequeathed under a trust created for his benefit. A beneficiary in order to be a person entitled under the said provision of the Code must show that he is a person entitled to or beneficially interested in the land held under the trust for him.

The plaintiff in this case is a beneficiary of the estate, not a beneficiary who is only entitled to a share of the general residue. If, following that case, he is entitled to enter a caveat, he should also by analogy be entitled to apply to remove a caveat, as an 'aggrieved person'.

Learned counsel for the plaintiff argued that Form 19B used by the defendant is defective, because it does not comply with the requirements of sub-ss (2) and (3) of s 323 of the National Land Code 1965 ('the NLC'), namely, the caveator must not only specify the nature of the claim, but must also state expressly whether the caveat is to bind the land or a particular interest only. He referred to the cases of *Tan Heng Poh v Tan Boon Thong* [1992] 2 MLJ 1 and *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345.

The law is now clear that a person who claims a registerable interest in a portion of land may caveat the whole land, provided the caveat is expressly limited to protect only that claim, which must be an interest recognized under the Code as being either registerable or entitled to protection. Furthermore, when applying for entry of a caveat, one should state one's interest in para 1 of Form 19B and, in para 2 give the grounds of the claim. One should also describe in Form 19B the particular interest claimed and the effect of the caveat. That is confirmed by the Federal Court in *Chor Phaik Har*'s case.

It is to be noted that in this case, Form 19B, used by the defendant does not state that the caveat is expressed to bind the land itself or the particular interest described in the schedule, because no deletion was made to either of the two limbs. We know that the defendant's husband is only one of the beneficiaries of the estate and therefore only has a share in the estate. The defendant, who claims to have obtained her interest in the estate from her husband, if at all, may only have an interest in part of the estate. Following *Chor Phaik Har*'s case, she should clearly state so in the Form 19B.

Failure to do so renders the entry of the caveat void and should, on that ground alone, be removed.

The other point raised by learned counsel for the plaintiff is that no grounds for the defendant's claim was given. It should be noted that para 2 of Form 19B used by the defendant states:

> Alasan-alasan tuntutan saya ke atas tanah/kepentingan itu ialah seperti dalam surat akuan.

A I am of the view that the grounds should properly be stated in para 2 itself, even if briefly. However, I would not on the ground that the grounds are not stated in para 2 itself but in the attached Statutory Declaration alone hold that the application (Form 19B) is defective and the caveat void. But, I say that it is advisable that the requirement of the form be followed.

B I shall now come to the more substantive issue. Does the defendant have a caveatable interest? The defendant's husband, as a beneficiary of the estate, clearly has a caveatable interest in the land. The defendant claims that as the wife of Yeap Tuan Aun she had received an oral declaration of trust to hold the said property in trust for her.

Of course, if there is a trust, then she should have a caveatable interest C in the land. I am aware that it is not for the court to make a finding of fact whether there is a trust or not on affidavit evidence, in this proceeding. If there is a serious issue to be tried on the alleged claim, that should be sufficient.

In the statutory declaration dated 30 August 1995, all that the D defendant said about her ground for wanting to lodge a caveat was that there was an oral declaration of trust on behalf of her husband to hold the land in trust for her. No particulars were given.

In her affidavit in reply, the defendant said that around 1989–1990 her husband bought four apartments for purpose of sale. He borrowed from banks. Still he did not have enough money to renovate the apartments. So, E upon him making the oral declaration of trust that she gave him loans and allowed him to use her overdraft facilities, all in all, totalling RM349,000. But her husband does not support her contention.

Even though I do not make a finding of fact whether such a trust exists or not, I cannot help but remark that the story is not quite probable. We do F not know what she does that she has so much cash to lend her husband. If, as she herself said, the declaration of trust was the consideration for the loan, it is difficult to believe that she would be happy with an oral declaration of trust alone. When such a transaction happens between husband and wife, and the husband does not come forward to confirm it, whose evidence, besides the wife alone, can we expect to have to prove or G disprove it?

The Torrens System was not introduced for no reason. It was to avoid the uncertainties such as this from haunting land administration. But unfortunately, after decades of its introduction, we still have such dealings as this 'oral declaration of trust', 'jual janji', 'assignment', 'bare trustee' and H other principles of the English land law being applied, not only diluting the effect of the Torrens System but also complicating an otherwise simple system. However, let me make it clear I do not at this stage decide that there is no oral declaration. Assuming that there is a serious issue to be tried, the question of balance of convenience is still to be considered.

On the one hand, we have the wife of one of the beneficiaries saying that I she had received an oral declaration of trust in her favour from her husband of his share in the Estate. On the strenght of such a claim alone she lodged a caveat on the land. Four years after the date she lodged the caveat she still

had not filed any suit against her husband or the estate regarding her alleged claim. On the other hand, because of the existence of her caveat, the beneficiaries are deprived of the transmission of their shares as legal owners. If she indeed loaned money to her husband and she caveated the property to secure her loan, in that situation too, the caveat should not be allowed to remain: it has nothing to do with the land. She has a contractual right in personam against her husband.

In summary, I allowed the plaintiff's application, first because the caveat is defective in form. Secondly, even assuming that there is a serious issue to be tried that she has a caveatable interest in the land by virtue of the alleged oral declaration of trust (I seriously doubt it can be proved), the balance of convenience is in favour of removing it.

The application is allowed with costs.

Application allowed with costs.

Reported by Ezatul Zuria Azhari